

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KRISTOPHER CHURCHILL	:	CIVIL ACTION
<i>On behalf of himself and all others</i>	:	
<i>similarly situated</i>	:	
	:	
v.	:	No. 10-6911
	:	
CIGNA CORPORATION, et al.	:	

ORDER

AND NOW, this 12th day of August, 2011, it is ORDERED Plaintiff Kristopher Churchill's First Motion to Certify Class (Document 6) is GRANTED in part and DENIED in part. The motion is GRANTED insofar as the following class shall be certified:

All individuals who, between November 24, 2004, and August 12, 2011, (1) were enrolled in a plan administered by a CIGNA Defendant, or insured under health insurance coverage offered by a CIGNA Defendant in connection with a plan, (2) are no longer enrolled in a CIGNA-affiliated plan, and (3) made a claim for Applied Behavior Analysis and/or Early Intensive Behavioral Treatment for Autism Spectrum Disorder which was denied on the grounds that such treatment is deemed by a CIGNA Defendant to be investigative or experimental.

Excluded from the class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as officers, directors, agents, servants or employees of Defendants, and the immediate family member of any such person. Also excluded is any judge who may preside over this case or any person who has already settled a claim for either of these therapies with a Defendant.

The motion is DENIED insofar as Churchill's proposed Subclass A shall be modified as described above, and insofar as proposed Subclass B shall not be certified.

It is further ORDERED:

- The law firms of Mantese Honigman Rossman and Williamson, P.C. and John J. Conway, P.C. are designated and approved as Co-Lead Counsel for the class;
- Co-Lead Counsel shall submit for this Court's approval a proposed notice to be mailed to

class members, which has been revised in accordance with this opinion, by August 22, 2011;

- Defendants shall provide Co-Lead Counsel with contact information for class members by September 30, 2011;¹
- Defendants' Motion for Extension of Time to File Response/Reply to Plaintiff's Motion for Class Certification (Document 9) is GRANTED;
- Defendants' unopposed Motion for Extension of Time to File an Answer to the Amended Complaint (Document 41) is GRANTED;
- Churchill's Motion for Leave to File Excess Pages in Plaintiff's Motion for Partial Summary Judgment, and Motion for Partial Summary Judgment, (Document 47) are DENIED without prejudice;²
- Churchill's Motion for Leave to File Supplemental Brief in Support of Class Certification (Document 49) is GRANTED;
- Churchill's Motion for Leave to File Response to Defendants' Supplemental Brief (Document 53) is GRANTED;
- Churchill's Motion for Leave to File an Amended Complaint (Document 61) is GRANTED;
- Defendants shall have 30 days to conduct discovery relating to Churchill's additional proposed named plaintiffs;

¹ This Court will set a schedule for mailing notice to class members upon approval of Co-Lead Counsel's proposed notice. This schedule will allow time for this Court to consider Plaintiffs' forthcoming motion to amend the class before notice is mailed to the class.

² Because there is an ongoing dispute regarding the scope of the class to be certified and discovery is not yet complete, and after consideration of Defendants' affidavit describing facts which remain to be discovered and Churchill's response thereto, this Court finds Churchill's Motion for Summary Judgment is premature and should be dismissed without prejudice to reassertion after resolution of these issues. *See Fed. R. Civ. P. 56(d)* ("If a nonmovant . . . cannot present facts essential to justify its opposition, the court may . . . defer considering the motion or deny it.").

- Churchill's Motion for Leave to File a Supplemental Brief in Support of Class Certification (Document 62) is DENIED without prejudice to reassertion after Defendants have conducted the additional class-related discovery described above;
- Defendants' Motion to Defer Consideration of Plaintiff's Motion for Summary Judgment (document 64) is GRANTED;
- Churchill's Motion for Leave to File Excess Pages (Document 67) is GRANTED.

BY THE COURT:

\s\ Juan R. Sánchez
Juan R. Sánchez, J.